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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/610,961	07/01/2003	Anand A. Kekre	VRT0063US	4162
60429	7590	07/24/2007		
CSA LLP 4807 SPICEWOOD SPRINGS RD. BLDG. 4, SUITE 201 AUSTIN, TX 78759			EXAMINER DWIVEDI, MAHESH H	
			ART UNIT	PAPER NUMBER
			2168	
			MAIL DATE	DELIVERY MODE
			07/24/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/610,961

Applicant(s)

KEKRE ET AL.

Examiner

Mahesh H. Dwivedi

Art Unit

2168

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

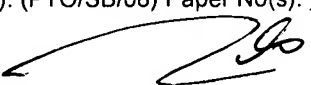
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1, 4-13, 15, 18-26, 30 and 31.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
TIM VO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Mahesh Dwivedi  
Patent Examiner, AU 2168  
07/23/2007

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's request for reconsideration filed on 07/18/2007 is acknowledged, but is not persuasive. Applicants argue on page 08 that "But in order for these portions of Rand to teach "modifying data of the first data volume" the Office Action would need to equate Rand's generated image of primary data volume 112 with the first data volume of claims 1 and 15. However, since Rand's generated image of primary data volume 112 is not Rand's primary data volume 112 (an image of a volume is not that volume), and since the Office Action has already equated the first data volume of claims 1 and 15 with the primary data volume 112, the Office Action cannot consistently equate Rand's generated image of primary data volume 112 with the first data volume of claims 1 and 15". However, the examiner wishes to point to paragraphs 06, 32, and 35 of Rand, which state "Additionally, while the primary data volume is being restored, read/write requests to the primary data volume are satisfied using the generated image of the primary data volume" (Paragraph 6), "In step 506 (FIG. 5), while the primary data volume 112 is being restored, read and write requests for data in primary data volume 112 that have not been restored are satisfied using the generated image of primary data volume 112. For example, if host system 102 issues a read request for data that has not yet been restored to primary data volume 112, then the read request is satisfied by using the generated image of primary data volume 112" (Paragraph 32, and "In step 602, a determination is made as to whether the data storage drive having the primary data volume is active. If the data storage device is not active, then in step 604, the read/write requests to the primary data volume are satisfied using the generated image of the primary data volume" (Paragraph 35). The examiner further wishes to state that the structure of what the limitation in independent claims 1 and 15 ("modifying data of the first data volume while the second data volume is being refreshed to the data contents of the first data volume that existed at Time T") is the same as that of the cited portions of Rand. The examiner further wishes to Rand clearly teaches modifying a data volume (read/write requests to an image) while another data volume (data volume 112) is being refreshed to the contents of the modified data volume (generated image). The examiner further wishes to state that since the structure of the limitation is clearly taught in Rand, Rand's method can be applied to the claimed first data volume and second data volume. Thus, Rand's method broadly teaches "modifying data of the first data volume while the second data volume is being refreshed to the data contents of the first data volume that existed at Time T"..